* **HIGH COURT OF DELHI : NEW DELHI**

\+ **W.P. (C) No. 7857 OF 2004**

DATE OF DECISION : 6th August 2007

Dr. Rajesh Karol ..... Petitioner
Through: Mr. C. M. Mohan, Advocate.

versus

Union of India & Others ..... Respondents
Through: Mr. Anil Gautam with Ms. Jyoti Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment? No

2. To be referred to Reporter or not? No

3. Whether the judgment should be reported in the Digest? No

VIPIN SANGHI, J. (Oral)

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1. The petitioner is a medical doctor having a decree in MBBS with post graduate diploma in Dermatology and Venerology. The petitioner has been working with the respondent Employee State Insurance Corporation since 1980. In this petition under Article 226 of the Constitution of India, he challenges the order dated 20th November 2003 passed by

Central Administrative Tribunal (the Tribunal) in O.A. No.1887/2002, whereby his aforesaid O.A. was dismissed by the Tribunal.

2. The petitioner had approached the Tribunal to challenge the order dated 16.7.2001 whereby the penalty of reduction of his pay by two stages in the present scale of pay was imposed upon the petitioner. The reduction was to remain for 2 years during which period, the pay of the petitioner was to remain constant at the reduced rates. It was further directed that the penalty will have cumulative effect. The petitioner also challenged the order whereby his departmental appeal was dismissed on 30th October 2001 and the order dated 4.9.2001 whereby recovery of Non Practicing Allowance (NPA) from 6.4.1999 to 30.6.1999 was affected.

3. The petitioner was charge sheeted on the charge that while functioning as Chief Medical Officer, IGEIS Hospital, he had indulged in private practice at a Shop at Swati Complex, A-9, Acharya Niketan, Main Patpar Ganj, Mayur Vihar, Delhi, (hereinafter called the Clinic). By his said conduct he had violated Rule 15(1) of the CCS (Conduct Rules) 1964, which were applicable to the employee of the Corporation by virtue of Regulation 23 of the Employee State Insurance Corporation (Staff & Conditions of Service) Regulations 1959. The inquiry officer was appointed who in his inquiry report exonerated the petitioner. However, the Disciplinary Authority prima-facie did not agree with the findings of the inquiry officer. The petitioner was provided the inquiry report along with the note of disagreement, to which he filed his representation. After considering the same, the aforesaid penalty order was passed by the Disciplinary Authority. The departmental appeal of the petitioner was also rejected.

4. The contention of the petitioner before the Tribunal was, and before us is that there was no evidence on record to hold that he was indulging in private practice. He contends that it has not been established that the petitioner had charged any fee or given receipt in respect thereof. The petitioner's case is that his wife, who is also a medical doctor, is a private practitioner at the Clinic. He states that in the evening he normally accompanies his wife to the said Clinic and he sometimes drops and picks her up from the Clinic, while at other times he sits in Clinic with her. He states that the clientele of his wife know that he is a skin specialist and consult him for their skin related ailments. He provides his services to such patients, however, without levying any charge.

5. The case of the respondent, on the other hand, was that the petitioner was not working as a specialist in the Corporation. He had not been granted permission to give free consultation as a skin specialist. A complaint had been received on 6.4.1999 alleging that the petitioner was indulging in private practice in the Clinic. It was further complained that he was habitual in leaving the hospital at 12.45 PM daily. Accordingly, the Vigilance Department carried out an investigation into this complaint. A Vigilance team visited the aforesaid clinic on 23rd July 1999. At that time, the wife of the petitioner was not in the Clinic. However, the petitioner was available with an attendant. Shri Ghanshyam Singh, one of the members of the Vigilance team introduced himself as a patient. He was examined by the petitioner and was charged Rs.80/- as consultation fee. On the aforesaid facts, the Petitioner was charge sheeted and inquiry was conducted.

6. The petitioner does not deny the fact that he treated Shri Ghanshyam Singh in the clinic and he also issued a prescription of medicines to Shri Ghanshyam Singh. It is his case that the receipt of Rs.80/- was only given by his wife and it could not be said that he was indulging in private practice.

7. Before us, it is argued by the learned counsel for the petitioner that admittedly at the clinic no sign board of the petitioner was found to have been displayed. It is also argued that the investigation team did not make any inquiries from the neighbours to ascertain as to whether the petitioner was operating professionally from the clinic. The submission of the petitioner even before us is that there is lack of evidence to hold him guilty of the alleged misconduct.

8. We are not impressed by the argument of the petitioner. To us it is obvious that if the petitioner were to run or operate professionally from the clinic, which is otherwise not permitted under the Service Rules, the petitioner is unlikely to put his name plate or a sign board on the clinic. The absence of the petitioner's sign board or name plate therefore does not lead to the conclusion that he was not indulging in private practice at that clinic. The matter is to be viewed in the light of the evidence that was actually produced in the inquiry proceedings and also in the light of the admissions of the petitioner himself. He admits that he was at the clinic on 23.7.1999. He also admits that Shri Ghanshyam Singh did visit the clinic on the said date and that he did in fact examine Shri Ghanshyam Singh. He also admits that a receipt for Rs.80/- as consultation fee was issued to Shri Ghanshyam Singh, though in the name of his wife.

9. We inquired from the Counsel for the petitioner as to for what services the consultation fee of Rs.80/- was charged by the petitioner's wife when, according to the petitioner, she had not examined or treated Shri Ghanshyam Singh at all. To this, the Counsel for the petitioner had no answer.

10. It appears that the petitioner was conscious of the fact that he could not have charged the consultation fee in his own name on account of his service conditions, and therefore the fee was charged in the name of his wife, even though the medical consultation and advise was provided by the petitioner and not by his wife. In view of the aforesaid, we find no infirmity in the order of the Tribunal. The same does not call for interference.

Dismissed.

VIPIN SANGHI, J.

A.K.SIKRI, J.

August 06, 2007
P.K. BABBAR